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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

v.

WILBUR L. ROSS, JR., *et al.*,

Defendants.

Civil Action No. 3:18-cv-01865-RS

**UNOPPOSED MOTION TO MODIFY
BRIEFING SCHEDULE FOR
DEFENDANTS' REPLY BRIEF;
[PROPOSED] ORDER**

Dept: 3
Judge: Hon. Richard Seeborg
Trial Date: None Set
Action Filed: March 26, 2018

CITY OF SAN JOSE and BLACK
ALLIANCE FOR JUST IMMIGRATION,

Plaintiffs,

v.

WILBUR L. ROSS, JR., *et al.*,

Defendants.

Civil Action No. 3:18-cv-02279-RS

**UNOPPOSED MOTION TO MODIFY
BRIEFING SCHEDULE FOR
DEFENDANTS' REPLY BRIEF;
[PROPOSED] ORDER**

Dept: 3
Judge: Hon. Richard Seeborg
Trial Date: None Set
Action Filed: April 17, 2018

Pursuant to Civil Local Rule 6-3, Defendants, by undersigned counsel, hereby file this Unopposed Motion to Modify the Briefing Schedule for Defendants' reply in support of their motions to dismiss this action. In support thereof, Defendants state as follows:

1. As set forth in the parties' stipulation regarding briefing schedule, filed on June 18, 2018, and adopted by the Court that same day, Defendants filed their Motion to Dismiss both actions on June 21, 2018. Plaintiffs filed their opposition briefs on July 17, 2018.

2. Defendants' reply briefs are due tomorrow, July 26, 2018.

3. In related actions challenging the same agency decision at issue in these cases, Defendants were ordered by Judge Furman in the Southern District of New York to produce substantial additional materials, including internal communications and documents from the Department of Commerce and the Census Bureau, by July 23, 2018.

4. The volume of materials to be produced in response to Judge Furman's order was substantially larger than Defendants anticipated. Late Sunday evening, July 22, 2018, it became apparent that, despite diligent work by trial counsel throughout the weekend, Defendants would be unable to complete production of the materials responsive to Judge Furman's order by July 23, 2018. Defendants requested and received of Plaintiffs' counsel in the New York actions consent for a three-day extension, until July 26, 2018, to complete production of additional responsive materials.

5. Judge Furman granted Defendants' request for a three-day extension on July 23, 2018.

6. Defendants produced substantial additional materials in the New York actions on July 23, including internal non-privileged emails from the DOC, additional materials from DOC custodians, and materials from the Bureau of the Census including documents and data relied upon by Census Bureau scientists in producing the recommendations to Secretary Ross found in the administrative record. Defendants also produced a privilege log, and served a courtesy copy of these materials on Plaintiffs' counsel in the *California* and *San Jose* actions the next morning.

7. Defendants continue to process substantial additional materials in response to Judge Furman's order, which will be served on Plaintiffs' counsel in all six actions challenging Secretary Ross's decision to reinstate a citizenship question on the 2020 Census, and produced publicly, tomorrow, July 26, 2018.

8. The unexpected additional production of materials in response to Judge Furman's order has resulted in an overlap such that Defendants' reply briefs in these actions coincide with the deadline to produce additional materials. Defendants are currently working to process for production and, where applicable, log many hundreds of additional documents. Accordingly, it would be extraordinarily difficult for Defendants' trial counsel to produce reply briefs, as originally stipulated, at the same time this production is completed.

9. Defendants request a modest extension of time, until Tuesday, July 31, 2018, to file their reply briefs.

10. Pursuant to Civil Local Rule 6-3, Defendants contacted Plaintiffs in an effort to obtain a stipulation to the time change. Due to the time required to coordinate between multiple clients, Plaintiffs' counsel in the *San Jose* action suggested that Defendants file an unopposed motion instead of a stipulation. Due to the time-sensitive nature of this request, Defendants believed it best to file an unopposed motion rather than delay filing while negotiating a stipulation with both sets of Plaintiffs' counsel. Defendants conveyed that intent to Plaintiffs' counsel in the *California* action, who also indicated that they do not oppose Defendants' request.

11. Substantial harm or prejudice would occur if the Court did not change the time for Defendants' reply brief because trial counsel is working diligently to complete production in response to Judge Furman's order and, despite best efforts, has been unable to complete the reply briefs due in these actions.

12. This is the first request for a modification of time in this case. Defendants do not believe that the requested modification will affect the schedule set in this case, as Defendants do not propose to alter the August 10, 2018, hearing date previously set by the Court.

Dated: July 25, 2018

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

BRETT A. SHUMATE
Deputy Assistant Attorney General

JOHN R. GRIFFITHS
Director, Federal Programs Branch

CARLOTTA P. WELLS
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Attorneys for Defendants

[PROPOSED] ORDER

On July 25, 2018, Defendants filed an Unopposed Motion to Modify Briefing Schedule. For good cause shown, it is hereby ORDERED that the Defendants' motion shall be, and hereby is, GRANTED. The following briefing schedule shall apply:

a. Defendants' reply brief shall be filed no later than July 31, 2018.

IT IS SO ORDERED.

Dated: _____

HON. RICHARD SEEBORG
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

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CITY OF SAN JOSE and BLACK ALLIANCE FOR
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WILBUR L. ROSS, JR., *et al.*,

Defendants.

Hon. Richard Seeborg

Case No. 3:18-cv-01865-RS

DECLARATION OF KATE BAILEY

I, Kate Bailey, pursuant to 28 U.S.C. § 1746, hereby declare and state as follows:

1. I am a Trial Attorney for the United States Department of Justice, Civil Division, Federal Programs Branch. I am one of the attorneys who is responsible for the litigation of this matter. I make the following statements based on my personal knowledge and upon information furnished to me in the course of my official duties.

2. In related actions challenging the same agency decision at issue in these cases, Defendants were ordered by Judge Furman in the Southern District of New York to produce

substantial additional materials, including internal communications and documents from the Department of Commerce and the Census Bureau, by July 23, 2018.

3. The same team of four trial attorneys is handling all six of the related challenges to Secretary Ross's decision to reinstate a citizenship question on the 2020 census. Over the course of the last three weeks, we have been working diligently with attorneys at the Department of Commerce to complete the production required by Judge Furman's order.

4. The volume of materials to be produced in response to Judge Furman's order was substantially larger than we anticipated. Late Sunday evening, July 22, 2018, it became apparent that, despite diligent work including throughout the weekend, we would be unable to complete production of the materials responsive to Judge Furman's order by July 23, 2018. Defendants requested and received of Plaintiffs' counsel in the New York actions consent for a three-day extension, until July 26, 2018, to complete production of additional responsive materials.

5. Judge Furman granted Defendants' request for a three-day extension on July 23, 2018.

6. Defendants produced substantial additional materials in the New York actions on July 23, including internal non-privileged emails from the DOC, additional materials from DOC custodians, and materials from the Bureau of the Census including documents and data relied upon by Census Bureau scientists in producing the recommendations to Secretary Ross found in the administrative record. Defendants also produced a privilege log, and served a courtesy copy of these materials on Plaintiffs' counsel in the *California* and *San Jose* actions the next morning.

7. Defendants continue to process substantial additional materials in response to Judge Furman's order, which will be served on Plaintiffs' counsel in all six related actions tomorrow, July 26, 2018.

8. The unexpected additional production of materials in response to Judge Furman's order has resulted in an overlap such that Defendants' reply briefs in these actions coincide with the deadline to produce additional materials. Defendants are currently working to process for production and, where applicable, log hundreds of additional documents. Accordingly, it would be extraordinarily difficult for my team and I to produce reply briefs, as originally stipulated, at the same time this production is completed.

9. Pursuant to Civil Local Rule 6-3, I contacted Plaintiffs' counsel in an effort to obtain a stipulation to the time change. Due to the time required to coordinate between multiple clients, Plaintiffs' counsel in the *San Jose* action suggested that Defendants file an unopposed motion instead of a stipulation. Plaintiffs' counsel in the *California* action were not unwilling to negotiate a stipulation but indicated that they would need additional time to coordinate and review among their co-plaintiffs. Due to the time-sensitive nature of this request, and the response received from *San Jose* counsel, my team and I thought it best to follow the suggestion of *San Jose* Plaintiffs' counsel and file an unopposed motion to extend time, rather than potentially delaying this request in an effort to agree to a stipulation.

10. Substantial harm or prejudice would occur if the Court did not change the time for Defendants' reply brief because trial counsel is working diligently to complete production in response to Judge Furman's order and, despite best efforts, we have been unable to complete the reply briefs due in these actions.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 25, 2018.

/s/ Kate Bailey
Kate Bailey
Trial Attorney